BASIS STATEMENT
and
SUMMARY OF COMMENTS AND RESPONSES
Chapters 10, 11, 12 and 13
Maine Labor Relations Board
(12 180)
October 20, 2000

BASIS STATEMENT

The current rules and procedures of the Board have not been amended since 1990. The division of the rules into five primary chapters was first established when the Board initially adopted its rules in 1972. The rules were amended over the years to reflect various statutory changes, to expand the requirements of notification to employees of certain events, and to address various procedural issues that arose. Two additional chapters were adopted, bringing the total to seven chapters. Because of the structure of the rules and the way they were expanded over the years, there was a significant amount of repetition and an inconsistency in format that made it difficult to locate the specific rule or rules that applied to certain situations. To the uninitiated, the rules were very hard to understand.

The Board's new rules are formatted to make them easier to understand and easier to pinpoint relevant provisions. Like the prior rules, the new rules cover all aspects of the collective bargaining process in the public sector: creating bargaining units, conducting elections to certify or decertify a bargaining agent, adjudicating complaints of actions that are prohibited by the laws governing collective bargaining, and providing assistance in the negotiations of collective bargaining agreements with mediators, fact finders, or arbitrators. The new rules include revisions to reflect statutory changes that have occurred since 1990 regarding unit merger elections, as well as revisions to simplify procedures for filing petitions and complaints, to reduce the amount of paperwork required, and to improve the administration of the collective bargaining laws.

It is expected that public employers and public employees will find the rules much easier to read and to navigate than the previous rules. The rules have been restructured significantly and

laid out in a manner that helps the reader understand the sequence of events and the specific requirements concerning proceedings before the MLRB. Descriptive section headers have been used to allow the user to more quickly locate the relevant section of the rule. Substantively, some procedures have been simplified reducing the amount of paperwork that must be provided to the Board and reducing the necessity of the parties using certified mail. Public employers, public employees and public employee organizations should see a minor cost savings and a more significant reduction in headaches because of the new rules. The rules do not impose an economic burden on small businesses as none are within the jurisdiction of the MLRB.

The Administrative Procedures Act requires that the Board consider the adoption of rules "to promote, when appropriate, the efficient and cost-effective use of alternative dispute resolution techniques, including the use of neutral facilitators, mediators and arbitrators" in the conduct of adjudicatory proceedings. 5 M.R.S.A. §8051. The Board has determined that it is unnecessary to propose such rules because it is already standard procedure to promote ADR techniques in every case. The labor relations community is very experienced in and is very aware of the benefits of mediation and arbitration in resolving both contract negotiations disputes and contract interpretation disputes. Because of that experience, the parties to a prohibited practice complaint are often receptive to the Executive Director's effort to mediate a settlement of the case at various stages before the hearing. In appropriate cases, the Executive Director may recommend the assignment of an outside mediator to attempt a settlement. In addition, the Board's rules also provide for deferring to arbitration in certain instances.

A public hearing on the Board's proposed rules was held on Tuesday, June 27, 2000. Notice of the public hearing was published in the major newspapers of the state and was given directly to many individuals and organizations interested in the Board's activities. Notice of the hearing and a copy of the proposed rules was also published on the Board's internet website. The deadline for receipt of written comments was August 15, 2000. Neutral Chair Peter T. Dawson presided at the public hearing with Employee Representative Gwendolyn Gatcomb and Employer Representative Karl Dornish present. Also present were Executive Director Marc Ayotte, Board Counsel Lisa Copenhaver and Hearings Reporter Roger Putnam.

COMMENTS RECEIVED AND THE BOARD'S RESPONSES

Appearing and providing oral testimony on the proposed rules was James Carson, Secretary-Treasurer of the Teamsters Union Local 340. Written testimony was received from Howard Reben, General Counsel for the Teamsters Union Local 340 to supplement the oral testimony of Mr. Carson. In addition, written testimony was received in the form of a joint submission from the Maine AFL-CIO, the Public Employee Committee of the Maine AFL-CIO, the Professional Fire Fighters of Maine and AFSCME Council 93. Mr. Carson made suggestions regarding four specific aspects of the rules, including a suggestion that the Board impose a one-year waiting period following a decertification before another union could be certified. This particular suggestion was supported by the written testimony received from the Teamsters General Counsel and by the AFL-CIO.

Waiting period following decertification.

Comment: Under current Board rules, an individual or an insurgent union may submit a petition to decertify the incumbent union and to certify another union in the same election. Consistent with the statute, a 30% showing of interest is required with such a petition and the contract bar rule applies. The Teamsters' proposal would prohibit a union from seeking certification at the same time the incumbent union is facing a decertification election and would require the insurgent union to wait one year before filing an election petition. The arguments presented by the Teamsters were that the current rule promotes "union shopping," allowing the insurgent union to gain a windfall of the benefits of the contract negotiated by the ousted union without any of the costs associated with negotiating a first contract. By requiring the employees to wait a year before certifying a new union, they argued, there would be no doubt that the motivation of the employees was that they were truly not being served by the ousted union. The Teamsters also argued that labor stability would be promoted by this rule change by reducing the frequency of changes in representative. They also argued that if raiding is encouraged by Board policy, the quality of union representation may diminish as the funds necessary to obtain initial contracts may not be readily available. The Teamsters contended that the presence of some

degree of chaos preceding a decertification/certification election often makes it difficult to conduct a fair election or sort out charges of impropriety, problems that would disappear if a one-year hiatus were imposed.

The argument in support of this change presented by the AFL-CIO was that the current decertification and certification processes are not in the best interests of either employers or workers because it has a destabilizing effect on labor-management relations. The prospect of changing unions causes confusion and anxiety for both managers and workers. The AFL-CIO also argued that it is unfair to the original union to allow rapid certification of a new union because the ousted union has usually invested considerable resources in organizing, bargaining and representing the unit. Both the Teamsters and the AFL-CIO noted that the unions of the AFL-CIO have addressed the raiding issue through constitutional provisions to prevent raiding but that the problem still exists because not all unions are part of the AFL-CIO.

Response: The Board concluded the change proposed is not permissible under the collective bargaining statutes administered by the Board.

Production of documents prior to hearing.

Comment: Mr. Carson also testified on the issue of the date by which documents must be produced when the Board issues a subpoena. Mr. Carson argued that under the current rules when a subpoena duces tecum is issued, the party simply shows up at the hearing with the documents in hand. The other party must review those documents and adjust the presentation of his or her case accordingly in a very short period prior to the start of a hearing, often just 15 minutes. Mr. Carson suggested that requiring the documents to be produced two weeks prior to the hearing would allow for sufficient preparation.

Response: The Board observed that the proposed rules do not preclude the issuance of a subpoena for documents to be provided before the hearing date. The Board decided that adding the following sentence to §17 of the Chapter 12 would clarify the procedure: "A subpoena for documents will ordinarily require the production of the documents at the prehearing conference."

Oral argument prior to dismissal of complaint by Executive Director.

Comment: Mr. Carson raised a concern on the procedure for dismissing a case when there has been a determination that the complaint lacks merit. Mr. Carson suggested that there be some opportunity for oral argument before the Board before a case is dismissed for lack of merit.

Response: Oral argument before the Board is allowed under the proposed rules (and the current rules) if the dismissal by the Executive Director is appealed to the Board. The Board concluded that no change to the proposed rule is necessary because the Executive Director is not precluded from allowing oral argument prior to dismissal if the Director considers that an "appropriate action."

Procedure when an employee objects to petition to disclaim.

Comment: The final issue addressed by Mr. Carson concerns the proposed procedure for a union to disclaim interest in continuing to represent a unit. The proposed rules would require a decertification election if any interested party objected to the union's petition to disclaim. Mr. Carson was concerned that an objection from one employee could force the union to go through a decertification election. Furthermore, there could be situations where the unit employees were unwilling to pay union dues or fair share fees but at the same time refused to vote to decertify the union. If there is no contract language requiring the payment of union dues or fair share fees, the union could be forced to represent the employees with no way out and no financial support for their services.

Response: The comment raised a valid point that holding a decertification election is not always the appropriate response to an objection to a disclaimer petition. The Board concluded that the Executive Director should be given some discretion to try to resolve the underlying dispute. The Board approved the following new language to replace section 81, subsection 4 in Chapter 11:

4. Consideration of Objection. After receipt of an objection to a petition to

disclaim, the Executive Director shall consider the nature of the objection and take appropriate action. This action may include formal or informal mechanisms to resolve the dispute, granting or denying the petition to disclaim, or scheduling a decertification election. The decision of the Executive Director may be appealed to the Board in accordance with Rule 30 of this Chapter.

BOARD ACTION

The Board concluded that the adopted rules should be effective as of January 1, 2001, and the existing rules contained in Chapters 1 through 7 should be repealed as of that same date. The effective date provision (Chapter 10, section 1) was modified to show that all of the new rules of the MLRB have an effective date of January 1, 2001. The Board also approved various spelling changes and two minor grammatical changes.

In each instance where the Board addressed comments raised through the rule-making proceeding, and in voting on the rules as a whole, the Board vote was unanimous.

This Basis Statement and Summary of Comments and Responses has been adopted by the Board at Augusta, Maine, this _____ day of October, 2000, at the same time as the adoption of the new Rules and Procedures for this Board.

MAINE LABOR RELATIONS BOARD

_____
Peter T. Dawson
Chair

_____
Gwendolyn Gatcomb
Employee Representative

_____
Karl Dornish, Jr.
Employer Representative